IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.PADMANABHAN NAIR

WEDNESDAY, THE 19TH DECEMBER 2007 / 28TH AGRAHAYANA 1929

MFA.No. 618 of 1996()

WCC.428/1992 of W.C.C.,KOZHIKODE
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APPELLANT - SECOND OPPOSITE PARTY:

UNITED INDIA INSURANCE CO. LTD., BADAGARA, REPRESENTED BY ITS ASSISTANT MANAGER, UNITED INDIA INSURANCE CO. LTD., THIRD PARTY CLAIMS CELL, VETUKATTIL BUILDINGS M.G. ROAD, KOCHI - 16.

BY ADV. SRI.N.NANDAKUMARA MENON
SRI.MURALI PURUSHOTHAMAN

RESPONDENTS - APPLICANT - FIRST OPPOSITE PARTY:
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1. P. GIRISH KUMAR, S/O. BALAN, PULIYANGAT NAMMINDA P.O., KOZHIKODE DISTRICT.

2. S. MOHAMMED, PAKKERANI VALAPPIL, BEACH ROAD, BADAGARA.

THIS MISC. FIRST APPEAL HAVING BEEN FINALLY HEARD ON 19/12/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

K. PADMANABHAN NAIR, J.

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M.F.A. NO.618 OF 1996

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Dated this the 19th day of December, 2007

J U D G M E N T

Second opposite party-Insurer in W.C.C. No.428 of 1992 on the file of the Commissioner for Workmen's Compensation (Deputy Labour Commissioner), Kozhikode, is the appellant. Appeal is filed against the order passed by the Deputy Labour Commissioner by which the appellant was directed to pay an amount of Rs. 48,384/- as compensation to the applicant.

2. First respondent-applicant filed an application under Section 22 of the Workmen's Compensation Act, 1923 alleging that he had an employment injury. According to the applicant he was the paid driver of Autorikshaw bearing Reg. No.KRD-9165 owned by the second respondent in this appeal. It was averred that on 5.8.1992 the Autorikshaw driven by the first respondent capsized and he sustained injuries during the course of employment. It was averred that he was getting Rs.1,800/- per month as salary and he was entitled to get a compensation of Rs.1,00,000/-. Second respondent did not

appear and contest. Appellant alone contested the case. It was contended that there was no employer-employee relationship. It was further contended that the vehicle bearing Reg.No.KRD-9165 was not covered with a valid policy of insurance issued by the appellant. It was contended that vehicle bearing Reg.No.KRD-7165 was insured with the appellant. Quantum of compensation claimed was also disputed. The Deputy Labour Commissioner found that the applicant sustained employment injury. The Commissioner also found that the applicant was having 20% loss of earning capacity and he was entitled to compensation. The Commissioner awarded Rs.48,384/- and directed the appellant to pay the same. Challenging that order, this appeal is filed.

3. Learned counsel for the appellant raised three contentions. It is argued that the vehicle bearing Reg.No.KRD-9165 was not insured with the appellant and the second respondent was not the owner of the vehicle at the relevant point of time. It was contended that a vehicle bearing Reg. No.KRD-7165 was insured with the appellant. It is argued that the formula adopted by the Commissioner for granting

compensation was not correct. It is argued that the accident occurred on 5.8.1992 much prior to the amendment of the Act. It is argued that originally for awarding disablement benefit only 50% of the monthly wages was taken and the income if it exceeded Rs.1,000/- it was fixed as Rs.1,000/-. It is argued that 50% was amended to 60% with effect from 15.9.1995 onwards and Rs.1,000/- was amended as Rs.2,000/- with effect from that date. It is argued that since the accident occurred prior to 15.9.1995, the multiplier adopted by the Commissioner is wrong. It is further argued that the Commissioner went wrong in holding that there is 20% loss of earning. Actually it is very less.

4. First respondent produced a disability certificate issued by the Associate Professor of Surgery, Medical College Hospital, Kozhikode showing that he was having 25% disability. But the Commissioner took a view that the loss of earning capacity is only 20%. I do not find any reason to reduce the percentage of loss of earning capacity again. So the loss of earning capacity fixed by the Commissioner is accepted. The contention of the appellant that the vehicle

bearing Reg.No.KRD-9165 was not covered by insurance is also not substantiated. First respondent has produced Exhibit A5, certificate of insurance. Copy of the policy shows that it was issued by the appellant and the vehicle covered by the policy is KRD-9165 for the period from 6.6.1992 to 5.6.1993. So the contention of the appellant that the vehicle was not covered by a valid policy of insurance is not correct.

5. It is argued that the multiplier adopted is wrong. The accident occurred on 5.8.1992. On that day under Section 4(1) compensation payable on account of the permanent disablement was 50% of the monthly wages. Income limit was Rs.1,000/-. In United India Ins. Co. v. Alavi (1998 (1) KLT 951 (F.B.), a Full Bench of this Court held that Sections 4(1) and 4(1A) of the Act have no retrospective effect and these two Sections operate only prospectively. Hence the compensation due to the first respondent is re-fixed as follows:

$$\text{“}\frac{1000 \times 50 \times 224 \times 20}{100 \times 100} = 22{,}400\text{”}$$

6. In the result, the appeal is allowed in part. Compensation due to the first respondent is modified and reduced. It is re-fixed at Rs.22,400/-. The order passed by the Deputy Labour Commissioner shall stand confirmed in all other respects.

Order on Civil Miscellaneous Petition No.2394 of 1996 shall stand dismissed.

K. PADMANABHAN NAIR, JUDGE.

vsv

K. PADMANABHAN NAIR, J.

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M.F.A. NO. 618 OF 1996

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J U D G M E N T

19TH DECEMBER, 2007